



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of)

Stringfellow, et al.)

Serial No. 10/560,999)


Filed November 15, 2006)

For FUNGICIDAL COMPOSITION)
THROUGH PERIDERM BARK)
APPLICATION TO WOODY PLANTS)

Group Art Unit 1616

CERTIFICATE OF MAILING

I hereby certify that this correspondence was deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 1, 2008


Jennifer Thornton, Secy. to Arthur M. Reginelli

DECLARATION OF Todd O'Connell

37 C.F.R. § 1.132

Sir,

I hereby declare that:

1. My educational background includes B.A. degrees in Chemistry and Biology from North Central College, Naperville, IL.
2. My professional experience includes over 25 years as a professional chemist in the areas of technical development and analytical chemistry. During this time, I spent about ten years performing technical research and development in the area of organic chemicals. Following that experience, I have worked in the area of agricultural chemicals including technical research relating to surfactants for use with various agricultural chemicals.
3. I am currently employed by Exacto, Inc. and hold the position of Senior Analytical Chemist.
4. I have been asked by Mr. William Stringfellow, the inventor of the invention described in U.S. Application No. 10/560,999, to provide my opinion as

to what one of ordinary skill in the art understood at the time of Mr. Stringfellow's invention.

5. I have reviewed U.S. Publication No. 2007/00166340 A1, which is the publication of Mr. Stringfellow's invention that is currently under examination as U.S. Application No. 10/560,999. I understand that the Examiner believes that Mr. Stringfellow's invention would have been obvious.

6. I am familiar with the technology disclosed in U.S. Patent No. 6,040,272 to Riego, et al. Despite the fact that I am familiar with this technology and the desire to apply systemic fungicide to the bark of trees, I would not have predicted the advantageous results achieved by Mr. Stringfellow. In particular, too many factors are at play and therefore one could not simply assume that the technology explained by Riego could be extended to include with fungicides.

7. Furthermore, I find the results achieved by Mr. Stringfellow with the phosphite compounds as the fungicide to be highly unexpected. My experience suggests that the organosiloxanes employed by Mr. Stringfellow are highly unpredictable and are often incompatible with many chemicals. If there is any predictability, I believe that the compatibility of organosiloxanes with organic compounds can often be predicted. But, the phosphite compounds employed by Mr. Stringfellow are inorganic or substantially inorganic compounds. I clearly would not have predicted that these compounds would be compatible with each other to an extent that a useful aqueous solution could be prepared and applied to the bark of trees with the success observed by Mr. Stringfellow.

8. I declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both,

under Section 1001 of Title 18 of the U.S. Code and that such willful false statements may jeopardize the validity of this application and any patent issuing thereon.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd O'Connell", written over a horizontal line.

Todd O'Connell

Date: 4/28/08